

## REMARKS

Applicants attach a Supplemental Declaration and Assignee's Consent to address the objections raised at page 2 of said Office Action. The surrender of the original Letters Patent will be addressed upon the indication of allowable subject matter.

The rejection of Claims 27, 29-31, 35, 37, 40 and 42-44 (but not of Claims 1-26, 28, 32-34, 36, 38, 39, 41, 45 and 46) as being unpatentable over VDO under 35 USC § 103(a) is traversed, and reconsideration is requested.

The Office Action does not set forth a *prima facie* case of obviousness by merely asserting an "obvious matter of design choice." As noted in *In re Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002), such an assertion is not the specialized knowledge and expertise contemplated by the Administrative Procedures Act and does not fulfill the PTO's obligation. Reasoned findings are critical to that end.

Moreover, applicants have noted that the apparatus shown in Figs. 7 and 10 of the VDO document does not include a throttle valve element. The apparatus may not even contemplate a throttle sensor for detecting an opening degree of the throttle valve. In other words, the apparatus shown in Figs. 7 and 10 is not integrated with a throttle valve element and a throttle sensor. The airflow rate control apparatus of the present invention includes a motor, a throttle sensor located within a body, and a throttle valve element mounted on the body.

In Fig. 19 of the VDO document, a connector of the sensor 8 is connected with the element 3, and a connector of the motor 7 is connected with element 6.

Thus, the connectors of the sensor 8 and the motor 7 cannot be integrated into a single connector. Accordingly, it would be impossible in the VDO arrangement to provide a single connector into which electrical connections of a motor and a throttle sensor, respectively, are aggregated.

Fig. 19 of the VDO document also discloses a unit including a motor and a sensor. This unit is, however, separately assembled from a throttle body. Thus, it would be impossible, here too, to provide a cover means provided with a connector on an outside surface thereof, to which connector a motor is electrically connected, the cover means being attached to a throttle body.

The control unit disclosed in the VDO document is also separated from a throttle body. Accordingly, it would be impossible to provide an air flow rate control apparatus comprising a control circuit accommodated on or in a cover means attached to a throttle body.

Accordingly, all of the claims, including new claims 47-53, patentably define over the VDO document. The new claims also are submitted for at least some of the reasons set forth in the attached Supplemental Declaration in relation to Claims 27, 35 and 40. No new matter or recapture is presented thereby.

Accordingly, early allowance is requested.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and

please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #381AS/42640RE).

Respectfully submitted,

April 22, 2002



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ATTORNEY DOCKET NO.: 381AS/42640RE  
PATENT

SUPPLEMENTAL DECLARATION AND POWER OF ATTORNEY  
REISSUE PATENT APPLICATION

As the below named inventors, we hereby declare that our citizenship, residence postal addresses and residences are as stated below; that we verily believe ourselves to be the original, first and joint inventors of the invention entitled:

**AIR FLOW RATE CONTROL APPARATUS**

the specification of which was filed on November 24, 1997 and included original U.S. Patent No. 5,868,114, issued February 9, 1999, and amendments thereto as required by 37 C.F.R. § 1.171 et seq.

We verily believe that, as provided in 37 C.F.R. § 1.175, the original U.S. Patent No. 5,868,114 is partly inoperative because we claimed less than we had a right to claim in the patent, as indicated in particular by the scope of the additional broader claims being submitted herewith as Claims 21-46. The assignee of this patent discovered the error and the need for broadened claim coverage upon reviewing the patent as stated in the Declaration filed May 8, 2001.

The errors include not claiming the combinations of the motor-driven throttle valve element, the throttle sensor and the control circuit provided on or in a cover provided with a connector as an interface to the outside or ambient surroundings, as set forth in Claim 21, as well as the claims dependent thereupon. Similarly, the errors include not claiming the combinations set forth in Claim 27, 35 and 40 as well as the claims dependent thereupon. In particular, the error included not claiming the combination which includes the electrical connection aggregated into a single connector, the connector and terminal formed at the cover with the motor being electrically connected to the connector, and the cover accommodating the control circuit and forming a space together with the throttle body, respectively.

All errors being corrected in this reissue application up to the time of filing of this Declaration arose without deceptive intent on the part of the applicants.

We offer to surrender the original patent and/or provide an appropriate affidavit or declaration in the event the same is lost, upon the indication of allowability of the reissue patent application.

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We hereby state that we have reviewed and understand the contents of the above-identified Specification, including the Claims, as amended by any amendment referred to above. We acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (a).

We hereby claim foreign priority benefits under Title 35, United States Code §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s) Priority Claimed

<u>07-004673</u> (Number)	<u>Japan</u> (Country)	<u>17 January 1995</u> (Day/Month/Year)	<u>Yes</u>
<u>07-006189</u> (Number)	<u>Japan</u> (Country)	<u>19 January 1995</u> (Day/Month/Year)	<u>Yes</u>

We hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, we acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56 (a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

(patented

Herbert I. Cantor, Reg. No. 24,392; James F. McKeown, Reg. No. 25,406; Donald D. Evenson, Reg. No. 26,160; Joseph D. Evans, Reg. No. 26,269; Gary R. Edwards, Reg. No. 31,824; Jeffrey D. Sanek, Reg. No. 32,168, to prosecute and transact all business

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in the Patent and Trademark Office connected with this application and any related United States and international applications. Please direct all communications to:

Crowell & Moring, L.L.P.  
P.O. Box 14300  
Washington, D.C. 20044-4300  
Telephone: (202) 628-8800  
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We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

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Date

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ASSIGNEE'S CONSENT

Hitachi, Ltd., Japan, assignee of the entire right, title and interest in and to U.S. Letters Patent No. 5,868,114, hereby assents to the filing of the attached application for reissue of said patent in accordance with 37 C.F.R. §1.172.

Hitachi, Ltd. Japan

8/27/2001

Date

By:

Yasuo Sakuta

Yasuo SAKUTA, Patent Attorney  
Executive Managing Director,  
Intellectual Property Group  
(Authorized Signing Officer)